# CASE SUMMARY

## Complaint against Housing Department (HD) for collecting excessive debris removal charge

## The Complaint

A flat owner of a HOS estate lodged a complaint against HD for:

(a) being unfair to owners of small flats in the estate by permitting the property management agent (PMA) to collect debris removal charge (DRC) at a flat rate;

(b) permitting the PMA to collect a DRC of $1,040 which was unreasonably high and, to some owners, violated the provision of the Deed of Mutual Covenant (DMC);

(c) not taking positive follow-up action on the overcharges by the PMA, resulting in reimbursements not being made to owners.

## Background Information

2. According to the DMC, owners should pay a fee for debris removal at the time of intake, and the PMA should, on behalf of HD, hire a contractor through open tender to provide debris removal service. A contractor was thus selected through open tender and recommended to HD for approval by the PMA. The PMA also proposed that the DRC be set at $1,040 per household.

3. Regarding the amount of the DRC, Section 7 (b) of the DMC of the estate clearly stated that it should not exceed the sum of two months' management contribution for the first year's budgeted management expenses. Hence, for those who paid management fee at less than $520 a month, the DRC at the flat rate of $1,040 exceeded the ceiling set in the DMC.

4. At the time of intake in September 2000, the complainant found the DRC collected to be too high. He therefore negotiated with the PMA but in vain. Later, he lodged a complaint with HD. However, after a lapse of about 20 months, the Department had not yet given any positive reply.

## Determination of DRC

5. Since the district where the estate is located is quite far from the dumping area, HD sought approval from Lands Department (Lands D) in August 1999 to raise the DRC on housing estates in that area. Approval was subsequently given to revise the DRC from no more than one month’s management fee to no more than two months.

6. HD said that the guidelines of Lands D did not state clearly that DRC should be apportioned among owners according to the undivided shares of the lot held by each of them. Consequently, when the PMA proposed that the DRC be levied at a flat rate, HD did not object. Moreover, it has been an established practice for HOS estates to collect DRC at a flat-rate and the amount of $1,040 did not exceed two months’ average management fee level ($520) of the estate in question. HD, therefore, considered the PMA’s proposal in line with the level stipulated by Lands D and approved it.

## Handling of Complaint

7. In September 2000, HD received a complaint from a flat owner of the estate alleging that the PMA had violated the DMC by overcharging the DRC. In October of the same year, HD sought legal advice and learnt that there was no legal basis for collecting DRC at a flat rate. Hence, it instructed the PMA to take remedial action.

8. From September 2000 when the complainant lodged his complaint with HD to May 2002 when the PMA undertook to reimburse the owners who had been overcharged, HD had exchanged correspondence with the PMA and met its representatives several times. The Department also had internal discussions and sought further legal advice. In addition, it had approached the complainant to explain the criteria for determining the DRC. Finally, the PMA wrote to HD in May 2002 and undertook to reimburse the relevant owners the amount overpaid.

## Observation and Opinion

Complaint Point (a)

9. In August 1999, HD applied to the Lands D to raise the DRC. Immediately after approval was obtained, HD instructed the PMA to commence with the tendering exercise. In October 1999, Housing Manager (HM) of the estate wrote to Senior Housing Manager/Agency (SHM/Agency) on the tender result and sought his opinion on the charging method (i.e. flat rate or pro rata), pointing out that pro rata basis according to the size of individual flats was more equitable. SHM/Agency replied in November 1999 that the established practice of charging at a flat rate should be followed. Accordingly, HM wrote to the PMA in November 1999 to confirm approval of the recommended charging method.

10. This Office considered that although the flat-rate method had been in use for a long time, it did not mean that such method was equitable. That HD staff had adopted the established practice for HOS estates and failed to consider the more equitable method of collecting the DRC on pro rata basis according to the size of individual flats was indeed inflexible.

11. HD revealed that regional housing managers would usually follow the advice of SHM/Agency because such advice was more authoritative. However, the HM concerned had mistaken the advice of SHM/Agency to be HD's central policy.

12. The reply of HD in paragraph 11 above indicated that the division of responsibilities between regional offices and central unit of HD was unclear. Whether through the regional office or central unit, HD should still be held responsible for the decision.

13. In this light, we considered complaint point (a) **substantiated**.

Complaint Point (b)

14. For the whole estate, the amount of $1,040 collected by the PMA from each flat owner did not exceed the ceiling set by Lands D. As the amount was based on the actual tender price (i.e. the lowest bid), it would have been a reasonable level. However, according to the DMC of the estate, for small flat owners paying less than $520 management fee a month, the amount of $1,040 collected by the PMA had definitely exceeded the stipulated ceiling.

15. In the circumstances, we considered complaint point (b) **partially substantiated**.

Complaint Point (c)

16. Upon receipt of the complaint, HD immediately instructed the PMA to take remedial action and discussed with the PMA on follow-up action. As the matter involved interpretation of Lands D guidelines and provisions of the DMC as well as negotiations with the PMA, it was not settled until after 20 months.

17. This Office could understand the problems of settling matters involving commercial organisations and interpretation of provisions of the DMC as developments were not completely within the control of HD. However, the time HD had taken over the matter was still unduly long even though the delay was not intentional.

18. Having examined the above factors, we considered complaint point (c) **partially substantiated**.

## Conclusion

19. From these findings, The Ombudsman concluded that this complaint was **partially substantiated**.

## Recommendations

20. This Office was pleased to note that small-flat owners who had been overcharged would soon be reimbursed.

21. We suggested that HD should:

(a) issue guidelines to highlight the provisions in the DMC concerning collection of DRC so that individual staff members would not misunderstand them or would simply follow the established practice, thus repeating the mistake; and

(b) review the division of responsibilities of its regional offices and central unit and give appropriate guidelines to prevent similar misunderstanding.

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